U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29769815

Date: FEB. 5, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a physiology researcher, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish he satisfied at least three of the initial evidentiary criteria. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established receipt of a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined the Petitioner fulfilled only two (judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi)). On appeal, the Petitioner maintains her qualification for an additional one (original contributions under 8 C.F.R. § 204.5(h)(3)(v)), discussed below.[1]

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), USCIS determines whether the person has made original contributions in the field.[2] USCIS then determines whether the original contributions are of major significance to the field.[3] Examples of relevant evidence include, but are not limited to: published materials about the significance of the person's original work; testimonials, letters, and affidavits about the persons original work; documentation that the person's original work was cited at a level indicative of major significance in the field; and patents or licenses deriving from the person's work or evidence of commercial use of the person's work.[4]

The Director discussed the Petitioner's submission of reference letters, citations, publication history, conference presentations, and downloads. On appeal, the Petitioner does not contest or address any of the Director's specific determinations relating to this evidence. Issues not raised on appeal are considered waived. *See, e.g., O-R-E-*, 28 I&N Dec. at 336 n.5 (citing *R-A-M-*, 25 I&N Dec. at 658

[1] The Petitioner does not contest or address the Director's decision relating to her previous claim of meeting the awards criterion under 8 C.F.R. § 204.5(h)(3)(i). We consider the Petitioner's prior eligibility claims not contested on appeal to be abandoned. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

[2] *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policymanual.

[3] *Id.*

[4] *Id.*

n.2). Instead, the Petitioner contends that the Director overlooked her eligibility based on her contributions in the development of the drug, [redacted] which is her sole argument on appeal.

The record contains a letter from Dr. A-G- who stated:

> [The Petitioner] has identified a specific subset of hypothalamic neurons that increase metabolic rate [redacted]. This work is very important in treating obese patients and was disseminated to the field through publication in [redacted]. I can confirm that this research is the basis of one notable drug, called [redacted], which was developed during my time as Head of Research at [R-P-]. Indeed, [the Petitioner's] research was implemented in our determination of what these signals are and where they act. Her work showed that [redacted] has been recently approved by the U.S. Food and Drug Administration for clinical use and is the first-in-class [redacted]

The Petitioner also submitted documentation about [redacted], such as "Highlights of Prescribing Information" and "Instructions for Use." In addition, the Petitioner provided screenshots from geneticobesitynews.com regarding an update on ongoing clinical trials by R-P- relating to [redacted].

Analysis under this criterion focuses on whether the person's original work constitutes major, significant contributions to the field.[5] Evidence that the person's work was funded, patented, or published, while potentially demonstrating the work's originality, will not necessarily establish, on its own, that the work is of major significance to the field.[6] For example, published research that has provoked widespread commentary on its importance from others working in the field, and documentation that it has been highly cited relative to others' work in that field, may be probative of the significance of the person's contributions to the field of endeavor. Similarly, evidence that the person developed a patented technology that has attracted significant attention or commercialization may establish the significance of the person's original contribution to the field.[7]

Here, the Petitioner has not demonstrated how her research contributions resulting in [redacted] rises to an original contribution of major significance in the field. Although Dr. A-G- credits the Petitioner's research with the eventual development of the drug, [redacted] the Petitioner did not show how [redacted] has impacted or influenced the field in a major way. The Petitioner presented evidence establishing the existence of [redacted] without demonstrating how the drug is viewed in the field as a majorly significant contribution.

[5] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[6] *Id.*
[7] *Id.*

Likewise, Dr. A-G- did not further elaborate and discuss the effects of [redacted]. For instance, while Dr. A-G- indicated the FDA's recent approval of the drug, the letter does not explain the extent, if any, of [redacted] implementation, usage, or overall impact in treating obese patients. Similarly, as indicated above, the geneticobesitynews.com screenshots report on the ongoing clinical trials of [redacted] rather than showing how the field views the research or drug as already being significantly important in a major way. Without further information, the Petitioner has not shown how the application of her research with [redacted] resulted in a contribution of major significance in the field.

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.[8] Submitted letters should specifically describe the person's contribution and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.[9] In this case, the letter lacks specific, detailed information explaining how the Petitioner's research involving [redacted] caused an original contribution of major significance in the field. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown she has made original contributions of major significance in the field.

III. CONCLUSION

Because she did not satisfy the original contributions category, the Petitioner did not meet the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 204.5(h)(3). Therefore, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve this issue.[10]

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of

[8] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[9] *Id.*
[10] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).

gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of her work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.